STATE OF MICHIGAN

COURT OF APPEALS

RALPH ROBERTS REALTY, LLC,

Plaintiff-Appellant,

v

NEIL TYSON and TYSON PROPERTIES, LLC,

Defendants-Appellees.

UNPUBLISHED
November 21, 2019

No. 345230
Oakland Circuit Court
LC No. 2017-160093-CB

Before: JANSEN, P.J., and BOONSTRA and LETICA, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(7) and (C)(8). We affirm.

I. RELEVANT FACTUAL BACKGROUND

In March 2011, plaintiff and defendant Neil Tyson entered into discussions for Tyson to participate in a real estate investment program run by plaintiff. The terms of the investment program were outlined in a written acquisition agreement, but plaintiff and Tyson failed to sign the agreement. Under the terms of the agreement, plaintiff would identify properties for Tyson to purchase as investment properties. If Tyson chose to purchase a property, plaintiff would purchase the property on Tyson's behalf, and would title the property in either Tyson's name, or in the name of Tyson's designated entity. Plaintiff would receive $5,000 for this service. The agreement went on to provide that plaintiff retained an exclusive right to sell any property obtained for Tyson, and would receive a "commission" of 7% of the gross sale of any property sold. The remaining proceeds of the sale, after deducting costs incurred by Tyson, would be split evenly between plaintiff and Tyson. If the property were sold for a profit of less than $1,000, the proceeds would not be split. In the event that any property acquired by plaintiff for Tyson was not sold within five years of the agreement, plaintiff would be entitled to 50% of the property's gross sale price premised on a valuation of the property.

Plaintiff purchased two properties for Tyson under the agreement at a sheriff's sale on March 22, 2011: 195 Eagle Way, South Lyon, Michigan (the Eagle Way property) for $24,989,

and 21395 Westview, Ferndale, Michigan (the Westview property), for $101.55. Plaintiff had the properties deeded to Tyson Properties, LLC. Five years later, the properties had not been sold, and defendants refused to pay plaintiff under the agreement.

Plaintiff filed a complaint in August 2017, alleging breach of contract and unjust enrichment, and sought 50% of the equity in the properties under the agreement.[1] Defendants moved for summary disposition under MCR 2.116(C)(7) and (8), arguing that the agreement was unenforceable under the statute of frauds because the agreement granted a conveyance of land to plaintiff, it could not be completed within one year, and plaintiff sought a commission for the sale of real estate. The trial court agreed that the statute of frauds barred plaintiff's claim, and granted summary disposition in favor of defendants. This appeal followed.

II. STANDARDS OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dawoud v State Farm Mut Auto Ins Co*, 317 Mich App 517, 520; 895 NW2d 188 (2016). A motion for summary disposition brought under MCR 2.116(C)(7) asserts that a claim is barred by "release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action." MCR 2.116(C)(7). In reviewing a motion for summary disposition brought under MCR 2.116(C)(7), we accept the contents of the complaint as true, unless documentation submitted by the moving party contradicts the contents of the complaint. *McLean v McElhaney*, 289 Mich App 592, 597; 798 NW2d 29 (2010). We also consider any affidavits, depositions, admissions, or other documentary evidence submitted. *Id*.

"A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Dell v Citizens Ins Co of America*, 312 Mich App 734, 739; 880 NW2d 280 (2015).

Finally, "[w]hether a statute of frauds bars enforcement of a contract is a question of law that we review de novo." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006).

III. ANALYSIS

Plaintiff argues that the trial court erred by finding the agreement was unenforceable under the statute of frauds because the agreement established that plaintiff would be paid a commission for a real estate transaction and the contract could not have been completed within one year. We agree that the statute of frauds precluded plaintiff from enforcing the agreement,

[1] Plaintiff's unjust-enrichment claim is not the subject of this appeal, and is not discussed herein.

but not for the reasons articulated by the trial court. Rather, we conclude that the agreement was unenforceable under the statute of frauds because it granted plaintiff an interest in land.[2]

"The starting point in analyzing oral statements for contractual implications is to determine the meaning that reasonable persons might have attached to the language, given the circumstances presented." *Rowe v Montgomery Ward & Co, Inc*, 437 Mich 627, 640; 473 NW2d 268 (1991). Furthermore, "[t]he 'overreaching principle of contract interpretation is that the court looks to all the relevant circumstances surrounding the transaction, including all writings, oral statements, and other conduct by which the parties manifested their intent." *Id*. at 641. Plaintiff alleges that the terms of the written and unsigned acquisition agreement represent the terms of the agreement at issue in this case. Contracts attached to a pleading are considered part of the pleading. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). To ascertain the terms of the agreement, we will rely on traditional contractual interpretation rules used for written contracts.

"In ascertaining the meaning of a contract, we give the words used in the contract their plain and ordinary meaning that would be apparent to a reader of the instrument." *Rory v Continental Ins Co*, 473 Mich 457, 464; 703 NW2d 23 (2005). "A dictionary may be consulted to ascertain the plain and ordinary meaning of words or phrases used in the contract." *Auto Owners Ins Co v Seils*, 310 Mich App 132, 145; 871 NW2d 530 (2015). "[C]ontracts must be read as a whole," *Kyocera Corp v Hemlock Semiconductor, LLC*, 313 Mich App 437, 447; 886 NW2d 445 (2015), giving "effect to every word, phrase, and clause," while taking pains to "avoid an interpretation that would render any part of the contract surplusage or nugatory," *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003).

"The statute of frauds exists for the purpose of preventing fraud or the opportunity for fraud, and not as an instrumentality to be used in the aid of fraud or prevention of justice." *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 526-527; 644 NW2d 765 (2002). In relevant part, MCL 566.132 states:

> (1) In the following cases an agreement, contract, or promise is void unless that agreement, contract, or promise, or a note or memorandum of the agreement, contract, or promise is in writing and signed with an authorized signature by the party to be charged with the agreement, contract, or promise:
>
> > (a) An agreement that, by its terms, is not to be performed within 1 year from the making of the agreement.
> >
> > * * *
> >
> > (e) An agreement, promise, or contract to pay a commission for or upon the sale of an interest in real estate.

[2] Because the trial court reached the correct result, albeit for the wrong reasons, reversal is not warranted. *Lewis v Farmers Ins Exch*, 315 Mich App 202, 217; 888 NW2d 916 (2016).

Similarly, MCL 566.106 requires contracts establishing an interest in land to be in writing:

> No estate or interest in lands, other than leases for a term not exceeding 1 year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

Contracts that fall within any portion of the statute of frauds are unenforceable. See, e.g., *Kelly-Stehney & Assoc, Inc v MacDonald's Indus Products, Inc*, 265 Mich App 105, 110-114; 693 NW2d 394 (2005) (holding that an oral contract was unenforceable because it fell within one portion of the statute of frauds). The writing requirement of the statute of frauds, however, "may be satisfied by several writings made at different times" and can also be satisfied by a series of writings, rather than one single writing establishing all the terms of the contract in question. *Id*. at 111-114.

Plaintiff and defendants agree that there was no writing in this case. Thus, the agreement's terms determine whether it falls within the statute of frauds. Three types of contracts that fall within the statute of frauds are relevant in this case: (1) contracts that cannot be completed within one year of formation, MCL 566.132(1)(a), (2) contracts paying a commission for the sale of land, MCL 566.132(1)(e), and (3) contracts creating an interest in land, MCL 566.106. If the agreement falls within any of these areas then it falls within the statute of frauds and is unenforceable. See MCL 566.106; MCL 566.132; *Kelly-Stehney & Assoc, Inc*, 265 Mich App at 110-114.

Generally, "agreements to share profits and losses arising from the purchase and sale of real estate are not contracts for the sale or transfer of interests in land and need not be in writing." *In re Handelsman*, 266 Mich App 433, 440; 702 NW2d 641 (2005) (citation and quotation marks omitted). However, the properties in this case have not been sold, and plaintiff is not attempting to collect a share of profits generated by the sale of a property. Instead, plaintiff is attempting to collect 50% of the properties' equity values.

When used in terms of real property, Black's Law Dictionary defines "equity" as "[t]he amount by which the value of or an interest in property exceeds secured claims or liens; the difference between the value of the property and all encumbrances on it." *Black's Law Dictionary* (11th ed); see also *Merriam-Webster's Collegiate Dictionary* (11th ed) (defining equity as "the money value of a property or of an interest in a property in excess of claims or liens against it."). As explained by our Supreme Court in *Lookholder v Ziegler*, 354 Mich 28, 36 n 7; 91 NW2d 834 (1958):

> The general rule is, that the word "interest" is broader and more comprehensive than the word "title." It embraces both legal and equitable rights. It covers rights in property less than title thereto, rights different from title, rights which may be enforced, legal rights.

> Interest, in common speech in connection with land, includes all varieties of titles and rights. When given its plain and natural meaning it comprehends estates in fee, for life and for years, mortgages, liens, easements, attachments, and every kind of claim to land which can form the basis of a property right. [Citations and quotation marks omitted.]

The agreement here purportedly established that plaintiff was entitled to 50% of the properties' equity values at the expiration of the agreement's five-year term, even if the properties were not sold. The agreement additionally established that plaintiff could record a claim of interest in the properties to "provide notice to third parties of [plaintiff's] interest in the [properties]." On the basis of the foregoing, the alleged agreement granted plaintiff an interest in the properties, and indeed, plaintiff is seeking 50% of the properties' equity. Thus, plaintiff's claim is premised on an interest in land, and falls within the statute of frauds. Accordingly, the trial court did not err by granting summary disposition to defendants because the statute of frauds rendered the agreement unenforceable.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark T. Boonstra
/s/ Anica Letica